

Message

From: David M. Metres [DMetres@bargcoffin.com]
Sent: 8/22/2019 5:55:36 PM
To: Gallo, Madeline [Gallo.Madeline@epa.gov]
Subject: RE: Haystack - relocation information

Maddy,

I just asked Allen and Brooke their thoughts, and they are open to Sona joining us.

Best,
Dave

From: David M. Metres
Sent: Thursday, August 22, 2019 10:44 AM
To: 'Gallo, Madeline' <Gallo.Madeline@epa.gov>
Subject: RE: Haystack - relocation information

Maddy,

I think our questions would be best addressed with just the four of us.

Dave

From: Gallo, Madeline <Gallo.Madeline@epa.gov>
Sent: Thursday, August 22, 2019 10:31 AM
To: David M. Metres <DMetres@bargcoffin.com>
Subject: RE: Haystack - relocation information

Thanks, Dave. Should I see if Sona is available as well? I think it may be difficult to get Steve on the line.

From: David M. Metres <DMetres@bargcoffin.com>
Sent: Thursday, August 22, 2019 10:30 AM
To: Gallo, Madeline <Gallo.Madeline@epa.gov>
Subject: RE: Haystack - relocation information

Excellent. Thanks, Maddy. We're on.

Allen Stegman and Brooke Kuhl will be joining us from Fort Worth, so if okay with you, I will circulate a calendar appointment with a conference line.

Thanks again,
Dave

From: Gallo, Madeline <Gallo.Madeline@epa.gov>
Sent: Thursday, August 22, 2019 9:24 AM
To: David M. Metres <DMetres@bargcoffin.com>
Subject: RE: Haystack - relocation information

Dave,

Yes, I am available at noon for a quick call today. You may call me at 415-972-3539.

Maddy

From: David M. Metres <DMetres@bargcoffin.com>
Sent: Wednesday, August 21, 2019 7:44 PM
To: Gallo, Madeline <Gallo.Madeline@epa.gov>
Subject: RE: Haystack - relocation information

Maddy,

A couple members of our team wanted to do a quick call with you to work through some details on the relocation package. Do you have availability tomorrow (Thursday) at noon Pacific?

We may have other windows that work tomorrow and Friday, but I'm pretty sure that one works for us. I can confirm tomorrow.

Thanks,
Dave

From: David M. Metres
Sent: Wednesday, August 21, 2019 10:46 AM
To: 'Gallo, Madeline' <Gallo.Madeline@epa.gov>
Subject: RE: Haystack - relocation information

Maddy,

Thanks for sending. I will review.

Best,
Dave

From: Gallo, Madeline <Gallo.Madeline@epa.gov>
Sent: Tuesday, August 20, 2019 3:55 PM
To: David M. Metres <DMetres@bargcoffin.com>
Subject: RE: Haystack - relocation information

Dave,

As you heard on the call today, EPA management has provided a one-week extension for submission of the relocation package, to August 30, 2019. Please feel free to reach out to me if you come across questions or hurdles. I will be mostly unavailable tomorrow due to a settlement negotiation in another case, but I should be back online by late afternoon.

Attached is a Categorical Exclusion Exception Review Checklist. I believe that this is what Superintendent Lester Tsosie's office currently uses to review residential lease application – I sent it to Chaitna Sinha at the Solicitor's Office in June, and she said that it is the current form. I also came across the justification for treating the leases as categorical exclusions from NEPA, and I am attaching it in case it is helpful. The review checklist tracks the language in 43 CFR 46.215, which describes the extraordinary circumstances under which the agency cannot make use of the categorical exclusion, per 43 CFR 46.205(c).

Chaitna also pointed me to 25 CFR 162.341, which requires BIA to consider the best interests of the Indian landowners in deciding whether to approve a residential lease, as being another authority where consideration of proximity to a

uranium mine is appropriate. The governing statute, 25 USC 415(a), requires BIA to ensure that adequate consideration has been given to, among other things, "the relationship between the use of the leased lands and the use of neighboring lands."

Lester Tsosie also explained to EPA that there used to be a complicated and time-consuming process for utilities to get rights-of-way in order to hook up new customers. Lester and his staff streamlined the process so that approvals for rights-of-way could be granted more quickly, but in order to qualify for the streamlined process, the utility companies are required to confirm that the customer has a residential lease first. As Priscilla and Vivian have told us on Haystack calls, utility companies do check the residential lease and will not hook up a customer without one. Thus, it would be difficult for someone to move to the area without securing a residential lease from BIA.

I hope this is helpful, as it is about the extent of my limited understanding of the legal requirements behind the process. As I said earlier on our call today, Lester described the categorical exclusion exception review checklist process that his staff performs to EPA in June. They rely on maps that EPA provides and periodically updates, which show the uranium mine locations, and EPA is working to provide BIA access to real-time data. BIA knows that if they have any uncertainty with respect to a hazard created by an abandoned uranium mine or cleanup, they can contact EPA for clarification.

Thanks,
Maddy

From: Gallo, Madeline
Sent: Tuesday, August 20, 2019 12:06 PM
To: David M. Metres <DMetres@bargcoffin.com>
Subject: RE: Haystack - relocation information

Thank you, Dave. I appreciate your message and your phone call this morning. I will check with my team on your extension request, and let you know soon.

Maddy

From: David M. Metres <DMetres@bargcoffin.com>
Sent: Tuesday, August 20, 2019 11:22 AM
To: Gallo, Madeline <Gallo.Madeline@epa.gov>
Subject: RE: Haystack - relocation information

Maddy,

Per your request, this email correspondence confirms that BNSF is setting aside the hotel-based temporary relocation offer, and is now preparing both a revised offer to relocate Ex. 6 Personal Privacy (PP) to mobile homes and a revised schedule for completing Ex. 6 Personal Privacy (PP) relocation and TCRA soil removal work in 2020.

Since BNSF previously invested time in preparing the hotel-based temporary relocation offer, and is now proceeding with the mobile home offer, BNSF requests a two-week extension for submitting a revised relocation offer from August 23 until September 6, 2019.

Thanks,
Dave

From: Gallo, Madeline <Gallo.Madeline@epa.gov>
Sent: Tuesday, August 13, 2019 9:22 AM

To: David M. Metres <DMetres@bargcoffin.com>

Subject: RE: Haystack - relocation information

Good morning, Dave:

2:00 works well for me – please call me at 415-972-3539. Thank you for making time for this call before your trip.

Maddy

From: David M. Metres <DMetres@bargcoffin.com>

Sent: Tuesday, August 13, 2019 8:08 AM

To: Gallo, Madeline <Gallo.Madeline@epa.gov>

Subject: RE: Haystack - relocation information

Thanks, Maddy.

How about 2:00 today? I am free any time after 1:00.

Wednesday, I will be traveling to Chicago, but land at noon (Pacific), so available thereafter.

Best,

Dave

From: Gallo, Madeline <Gallo.Madeline@epa.gov>

Sent: Monday, August 12, 2019 5:07 PM

To: David M. Metres <DMetres@bargcoffin.com>

Subject: Haystack - relocation information

Hello, Dave:

Steve forwarded me an email from Allen about the relocation misunderstanding that you and I discussed after our last group call on August 2. We discussed Allen's email internally with our larger EPA team, and I would like to talk with you more about the relocation and some additional practical issues that came up during EPA's internal discussion. I know Steve and Allen have been trying to connect, but last I heard, they were still playing phone tag.

Are you available to talk with me on Tuesday or Wednesday this week? I'm free Tuesday from about 9:30 until 6, and on Wednesday until 4.

Thanks,

Maddy

Madeline Gallo

Assistant Regional Counsel

U.S. EPA Region 9

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From: Calanog, Steve <Calanog.Steve@epa.gov>

Sent: Monday, August 5, 2019 9:08 AM

To: Gallo, Madeline <Gallo.Madeline@epa.gov>
Subject: FW: 8/2/19 Haystack Mine Conf Call Notes

Maddy – See below – I just got this email.

Steve Calanog
Federal On-Scene Coordinator
Emergency Response Section
US Environmental Protection Agency

415-595-8350 (m)

From: Stegman, Allen M <Allen.Stegman@BNSF.com>
Sent: Monday, August 5, 2019 8:55 AM
To: Calanog, Steve <Calanog.Steve@epa.gov>
Subject: RE: 8/2/19 Haystack Mine Conf Call Notes

Hi Steve

I know we previously discussed and you had indicated there wasn't any appetite within EPA to delay TCRA to accommodate a move to permanent residences and eliminate need for temporary housing. Is that still the case in light of recent events and concerns on temporary housing?

We may still be able to get TCRA done this year and move them to permanent residences without need for temporary housing if all things came together and worse case it would delay TCRA until next spring. Moving the families though does take some pressure off time critical nature of the work.

Allen

From: Calanog, Steve [mailto:Calanog.Steve@epa.gov]
Sent: Monday, August 5, 2019 10:09 AM
To: Makerov, Mike <Mike.Makerov@BNSF.com>; Stegman, Allen M <Allen.Stegman@BNSF.com>; Thomas, Charles D <Charles.Thomas@BNSF.com>; Vivian Craig <viviancraig@navajo-nsn.gov>; Kuhl, Brooke <Brooke.Kuhl@BNSF.com>
Cc: ali.harmon@arcadis.com; Werth, Drew <Andrew.Werth@arcadis.com>; Gallo, Madeline <Gallo.Madeline@epa.gov>; Tom, Priscilla <Tom.Priscilla@epa.gov>
Subject: 8/2/19 Haystack Mine Conf Call Notes

EXTERNAL EMAIL

All -

BNSF: Mike Makarov, Brooke Kuhl, Charles Thomas; Allen Stegman (second half of call)

- Arcadis: Drew Werth, Alison Harmon
- Outside Counsel: Dave Metres (I don't have an email for Dave)

NNEPA: Vivian Craig

USEPA: Steve Calanog; Maddy Gallo; Priscilla Tom (second half of call)

1. Arcadis change of staff, time change for call

Maher has left Arcadis for another opportunity. Ali Harmon is filling in, and she has been working with Drew at other Navajo uranium mines for a few years.

Friday afternoons are difficult for our biweekly call. We will try scheduling calls for Tuesday afternoon, starting 8/20, to see if that works better for everyone.

2. Residential lease application and DCRM update:

Vivian went out with DCRM to conduct the surveys this week. They completed two surveys, one for each home site. The **Ex. 6 Personal Privacy (PP)** home will be west of **Ex. 6 Personal Privacy (PP)** house, which will be in **Ex. 6 Personal Privacy (PP)**. The team persevered despite nearby thunder and lightning that forced them to seek shelter. Vivian told Rena Martin that Vivian wants to hand-carry the documents to the various offices.

Charles asked for a map to confirm the home sites are outside of the mine site. Arcadis and Vivian assured him that the **Ex. 6 Personal Privacy (PP)**s in the area where EPA scanned to find a safer location for **Ex. 6 Personal Privacy (PP)** and that it is outside of the mine site.

Arcadis will ask DCRM for a timeline on the completion of written reports for the cultural resources and biological surveys.

3. Utilities update

BNSF reached out to NTUA for guidance on the process of securing water lines to the new home locations. A lease is necessary first, then BNSF will consult a construction contractor and **Ex. 6 Personal Privacy (PP)** to get additional information to apply for the water line. NTUA will then go out to confirm whether a right of way will be needed. It is estimated to take a couple of months.

BNSF talked with Continental Divide about electricity. If the nearest pole is within 100 feet, a connection to the new homes will be quick. If not, it will take more work to get a right of way and pole installed. Vivian explained that there are two power line extensions in the area – one to **Ex. 6 Personal Privacy (PP)** existing homes, and one north of the area, so there are two options for an extension.

The bid walk for the TCRA will include the relocation work, such as the utility tie-ins, home installation, and septic system construction. All three potential bidders have the capability to do the TCRA and the relocation.

Vivian will talk with Yolanda at the Public Water Utilities to see if there are any regulatory hurdles to clear for installing a septic system.

4. Community Liaison

No one besides **Ex. 6 Personal Privacy (PP)** has stepped forward as a potential community liaison. Vivian thinks that BNSF should talk internally about whether that might present a conflict of interest. She has one other person in mind but hasn't been able to connect with them to see if they are interested – she will keep trying.

BNSF will create and send a flyer to Vivian and Priscilla on Monday or Tuesday. Priscilla offered to post them next week in the supermarket in Grants, at the BIA school, and at the post office. Vivian will forward them to the Baca Prewitt Chapter for posting.

5. Relocation

Dave and Brooke are working on a temporary relocation package that would put **Ex. 6 Personal Privacy (PP)** into a hotel for the duration of the TCRA. After the temporary package is complete, they will work on a permanent relocation package in the future.

Maddy expressed EPA's concerns about a hotel relocation. As to the question of whether the soil under the home is contaminated: Randy Nattis confirmed that no sampling has been done under the homes; the in-home sampling was below actionable levels, but that does not indicate the soil is also under actionable levels; no cleanup has been done under the homes, only some cleanup done around homes and not the full 1-acre buffer; if soil around the house is contaminated, it's likely that soil under the house is also contaminated. On the question of whether cleanup can be done without damage to the structures: Ex. 6 Personal Privacy (PP) home is very close to/on top of the access road that will be needed to do work for TCRA, EE/CA, and possibly non-time-critical removal action in future; homes are fragile; many trucks will be hauling nearby. EPA has also found it more cost-effective and less disruptive to relocate residents once at the beginning rather than pay for extended hotel stays and per diems. It is possible that at least some of the residents will not want to move to a hotel even temporarily.

Allen said that Randy's memory is bad and that the POLREP says something different; that Vivian initially recommended putting Ex. 6 Personal Privacy (PP) in a hotel; the work will be completed quickly (a matter of a couple of weeks, or even as little as 10 days); soil has been removed from around the yard, and BNSF is going off of prior advice.

There was also some confusion as to whether Ex. 6 Personal Privacy (PP) home is on or near the road. Vivian and Priscilla clarified that Ex. 6 Personal Privacy (PP) lives in the Ex. 6 Personal Privacy (PP) and not in Ex. 6 Personal Privacy (PP) home. Everyone opened google earth to measure the distance, which was determined variously as 18 feet, 70 feet, and over 200 feet. Steve suggested everyone go out and scope out what BNSF is proposing.

BNSF/Arcadis suggested that they build an access road through Section 19 on BNSF's property to completely clear the residents' 1-acre buffer. Vivian warned that it may be difficult to fit the road in between the residents' septic system and the neighboring allotment land. She also expressed concern that contamination from Section 19 could be spread to the Bibo Trespass when big trucks and machinery travel through it. Drew said that additional details will need to be worked out with the contractors during/after the bid walk, and that BNSF has a lot of flexibility in putting a road through Section 19, will have gamma scanners, and, per the approved Work Plan, there are already requirements for decontamination, air monitoring, and dust suppression. BNSF said that it does not want contamination to spread.

BNSF/Arcadis (sorry, can't remember if Drew or Mike said this) said that Randy removed 192 cubic yards of material around the residences, so BNSF will scan again for exceedances and will consolidate waste onto Section 19. Because of Randy's work, BNSF does not expect there to be many exceedances, so the work can be done with a wheelbarrow and shovel, not heavy equipment that might damages the homes. BNSF and Arcadis will also scan under the trailers to see if any soil must be removed.

Maddy asked what will happen if, despite BNSF's best efforts, there is damage to the homes? BNSF only responded that they have worked with fragile homes before and can protect them adequately. Maddy asked that temporary relocation package address the potential that the homes are damaged despite BNSF's best efforts and considerable experience in protecting homes.

BNSF has no timeline for a permanent relocation proposal at this time. They are working on temporary relocation now, and need to see the results of the cultural resources and wildlife surveys in order to proceed with permanent relocation and an offer package that will work for everyone.

Vivian asked about what if Ex. 6 Personal Privacy (PP) will not relocate to a hotel during the work? Dave said that we can't force them to accept something they don't want, so BNSF will work on putting together an offer that is fair and adheres to the AOC and guidance on temporary relocation. Vivian said that it would be fair to give them new homes in the area. Allen said that BNSF is trying to do that, but is working on the TCRA before permanent relocation.

EPA will evaluate this new proposal to create a new road and temporarily house residents in hotel rooms, and will need to discuss with management.

Next steps:

- A. BNSF/Arcadis to reschedule call for Tuesday afternoons. Next call 8/20.
- B. Arcadis will ask DCRM for an estimate on completion of survey reports.
- C. Vivian will contact the Public Water Utilities to see if there are any regulatory requirements for installation of a septic tank.
- D. BNSF will send a flyer for community liaison posting to Priscilla and Vivian, who will post/disseminate flyers.
- E. BNSF/attorneys to create temporary hotel relocation package and submit to EPA within 1-2 weeks. Package should include contingency if homes are damaged.
- F. Not discussed on call – can BNSF provide an update on the timing of the bid walk?

Let me know if you have any questions or comments.

Steve Calanog
Federal On-Scene Coordinator
Emergency Response Section
US Environmental Protection Agency

415-595-8350 (m)

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